



{In Archive} Comment on MN's Small MS4 permit
Livingston, Brian

to:

Brianc Bell

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As we discussed on the phone this morning, here is a draft response that has not been reviewed and approved by others in the stormwater program, attorney generals staff, or MPCA management (only my opinion at this point).

We really need to find a way to work better together in the future in regards to EPA commenting on permits and rules.

EPA Comment #2:

There is no provision in the draft permit which addresses compliance with water quality standards. The EPA Model MS4 General Permit contains the following provisions:

"This permit does not authorize discharge that would cause or contribute to in stream exceedances of water quality standards. Your storm water management program must include a description of the BMPs that you will be using to ensure that this will not occur. EPA may require corrective action or an application for an individual permit or alternative general permit if an MS4 is determined to cause an in stream exceedance of water quality standards."

MPCA Draft Response (#2):

As a delegated state issuing the federal NPDES permit on behalf of EPA in Minnesota, the MPCA must comply with federal law, not EPA model permits. EPA's comment contradicts their own language found in the Federal Register:

"The CWA [Clean Water Act § 402 (P)(3)(B)(iii)] requires that NPDES permits for discharges from MS4s 'shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design and engineering methods.'... Compliance with the conditions of the general permit and the series of steps associated with identification and implementation of the minimum control measures will satisfy the MEP standards... EPA envisions application of the MEP [Maximum Extent Practicable] standard as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards. If, after implementing the six minimum control measures there is still water quality impairment associated with discharges from the MS4, after successive permit terms the permittee will need to expand or better tailor its BMPs with in the scope of the six minimum control measures for each subsequent permit. EPA envisions that this process may take two or three permit terms." [64 FR at 68754 (1999)].

Regardless, the MPCA's permit, as both an NPDES and State Disposal System (SDS) permit, is meant to "maintain water quality standards where there is compliance, and help bring waters that do not meet water quality standards into compliance" (Part I. Permit Goals of the draft permit). The MPCA will evaluate compliance with water quality standards through contracts currently in place to perform BMP effectiveness monitoring.

EPA Comment #2 Implications:

One of 6 contested case hearing requests from the Minnesota Center for Environmental Advocacy was on the subject of water quality standards:

"Whether the Draft Permit contains adequate and precise enough measures to ensure compliance with all applicable

Minnesota and federal laws and rules, in particular compliance with water quality standards and what those measures should be". (MCEA comment letter 2002)

MCEA has received a copy of all comments received, including EPAs. This comment will probably be used against us in the future. I recommend that the MPCA make a formal request to EPA Region 5 to retract their comment.

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